

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 05-0032P**

**Withholding Tax  
For the Calendar Year 2002**

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**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late filing of W-2 forms for the calendar year 2002.

The taxpayer is a company residing in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the late penalty should be abated as the error was unintentional.

The taxpayer states all W-2 and WH-18 forms were processed by the due date. All forms were placed in the mail for delivery by the due date. It was discovered after mailing that the state copies of W-2 forms were not included with form WH-18 in the original mailing. As such, the taxpayer made a second mailing with copies of the W-2 and WH-18 forms.

The Department points out the W-2s and WH-18 were received one month late.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer’s penalty protest is denied.